



**City of Seattle**

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**Department of Planning and Development**

D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3013773  
**Applicant Name:** Peter Zuvela for Foss Maritime Company  
**Address of Proposal:** 660 West Ewing Street

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Application to allow two, 50 ft. by 83 ft. shipyard membrane structures (8,300 sq. ft.) accessory to major vessel repair (Foss Maritime).

The following approval is required:

**Shoreline Substantial Development Permit** – To allow future construction of two vessel repair buildings in an Urban Industrial (UI) Shoreline Environment (SMC 23.60)

**SEPA DETERMINATION:** ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

**BACKGROUND INFORMATION**

**Existing Conditions**

The property is located in the Ballard-Interbay neighborhood, east of Salmon Bay and the Ballard Bridge. This property, known as Foss Maritime Shipyard, is on southwest side of the Lake Washington Ship Canal in an Urban Industrial (UI) shoreline environment zoned General Industrial 1 with a 45' height limit (IG1 U/45) and within the Ballard-Interbay-Northend Manufacturing Industrial Center. The site is bordered by West Ewing Street on the southwest, 11<sup>th</sup> Avenue West on the northwest, Lake Washington Ship Canal on the northeast, and 6<sup>th</sup> Avenue West on the southeast. Existing development on this site are several buildings that

support the major vessel repair and tugboat service operations. Vehicular access to the entire property is via entrances along West Ewing Street.

### Area Development

Development surrounding this site consists mainly of marine-related industrial uses. The properties northwest and southeast of the subject property are also zoned IG1 U/45. The landward side (southwest) of West Ewing Street is zoned Industrial Buffer (IB U/45) and is partially in the UI shoreline environment.

### Proposal

The proposal is to construct two 50 ft. by 83 ft. prefabricated membrane structures to allow for marine retail sales and service use-major vessel repair. The proposed one-story structures will be connected to resemble one oval tent-like building measured at 8,300 square feet (sq. ft.). The proposed height of the connected membrane structures will be 44 ft.; nine feet above the 35 ft. base height limit allowed for structures within a UI shoreline environment. Per the submitted drawings the construction activity will be located on dry land. No work is proposed over the water.

### Public Comments

The public comment period for this project ended September 21, 2012. DPD received no written comments regarding this proposal.

## **ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

### Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

### **A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW**

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology (DOE) is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60.

Development on the shorelines of the State is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

**B. THE REGULATIONS OF CHAPTER 23.60**

Pursuant to SMC 23.60.064C, in evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that the proposed use: 1) is not prohibited in the shoreline environment and the underlying zone and; 2) meets all applicable development standards of both the shoreline environment and underlying zone and; 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if required.

**SMC 23.60.004 - Shoreline Policies**

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

An economic objective for the shoreline is to "Encourage economic activity and development of water-dependent uses by supporting the retention and expansion of existing water-dependent businesses and planning for the creation of new developments in areas now dedicated to such use." (Please refer to Economic Development Goals, Policy LUG51). An area objective for this portion of the Ship Canal is to "retain and encourage the important role that the Ship Canal plays in state, regional and local fisheries by reserving the Ship Canal primarily for water-dependant and water-related uses" (please refer to Area Objectives For Other Shorelines Areas, Policy LU269 2a). The purpose of the Urban Industrial (UI) environment as set forth in Section 23.60.220.C.11 is to "provide for efficient use of industrial shorelines by major cargo facilities and other water-dependent and water-related industrial uses. Views shall be secondary to industrial development and public access shall be provided mainly on public lands or in conformance with an area-wide Public Access Plan".

Major vessel repair is designated as a water-dependent use. The proposed water-dependent marine retail sales and service use (major vessel repair) to be located in the prefabricated membrane structures is supported by both the purpose of the UI shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan.

### Development Standards

The proposal to erect two attached prefabricated membrane structures to allow a marine sales and service use (major vessel repair) is permitted outright in SMC 23.60.840 governing the UI shoreline environment. The proposed action is therefore subject to:

1. *The general development standards for all shoreline environments (SSMP 23.60.152);*
2. *The development standards for uses in the UI environment (SSMP 23.60.870); as well as*
3. *The development standards for General Industrial 1 zones (SMC 23.50).*

#### 1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

The general standards listed in SMC 23.60.152 apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Master Program (SMP) and with best management practices for the specific use or activity. These general standards of the SMP state, in part, that all shoreline development and uses are subject to the following:

- A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels with petroleum product capacities of ten thousand five hundred (10,500) gallons or more.
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains and planted buffers.
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.

- G. All shoreline developments and uses shall control erosion during project construction and operation.
- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.
- J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

The Stormwater Control Code (SMC 22.800-22.808) places considerable emphasis on protecting water quality. In conjunction with this effort, DPD developed a Director's Rule 16-2009, to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving

construction sites or where construction will impact receiving waters. Due to the extent of proposed work associated with the erection of the structures, the potential exists for impacts to the Lake Washington Ship Canal during construction.

The nature of the use is boat repair. Per the applicant, the prefabricated membrane structures will be utilized to repair ferrous and non-ferrous hulls; vessel conversion; vessel rebuilding, vessel dismantling and exterior vessel painting. The DPD structural engineer and a Seattle Fire Department plans examiner will review and determine the level of occupancy required for this use as part of the building permit application. They will also determine whether or not certain activities such as painting and the usage of hazardous materials will be allowed. It is possible that at some time during operations spillage of debris or chemicals may occur. Therefore, mitigation is warranted, including requirements for use of Best Management Practices (BMP) and spill prevention and control.

The proposed project's design to construct two prefabricated membrane structures is consistent with the requirements of this section. The applicant has provided written communication from DOE indicating that the proposed activity is covered under the current National Pollutant Discharge Elimination System (NPDES) permit. A suite of customized BMPs are also noted on the submitted drawings. The DPD Shoreline Expert has reviewed the NPDES permit and BMPs and deemed them complete. To ensure that these standards are met, the proponent will be required to have all personnel responsible for the repairing of vessels acknowledge and follow the BMP plan and be trained to utilize the spill prevention kit located on site.

As proposed and as conditioned below, the project complies with the above shoreline development standards. As conditioned below, the operation of the proposed boat repair and related activities should have minimal effects on migratory fish routes and does not warrant further conditioning.

## 2. Development Standards for UI Shoreline Environments (SSMP 23.60.870)

The development standards set forth in the Urban Industrial Shoreline Environment relate to critical habitat protection, height, lot coverage, view corridors, setbacks, water-related uses and public access on waterfront lots. The proposal conforms to all of the development standards for the UI environment, with the exception of the 35' height limit. An exception is provided at SMC 23.60.872.B, for structures accessory to a water-dependent (or water-related) use which require additional height because of intended use. Such structures may be permitted to extend up to 55' in the Ship Canal area when the views of a substantial number of upland residences would not be blocked by the increased height. The prefabricated membrane structures are shown on the plans to have a combined height of approximately 44', which is 9' over the 35' height permitted outright.

The applicant has provided views from ten locations upland from the subject site: four consecutive points along the south side of West Nickerson Street and six consecutive points along the north side of West Nickerson Street; all situated between Jesse Avenue West and 8<sup>th</sup> Avenue West. According to this documentation, upland residences' views would not be blocked by the proposed membrane structures because of the existing elevated topography and extensive tree canopy coverage.

Because the additional height is necessary to accommodate the repairing/rebuilding of large boats and the applicant has demonstrated that the views of a substantial number of upland residences would not be blocked by the increased height, the proposed increase of 9' above the 35' height limit is warranted and allowed.

### 3. General Development Standards for Industrial Zone Uses (SMC 23.50)

The project proposal must meet the development standards of the underlying General Industrial 1 (IG1) zone. The development proposal has been reviewed by a DPD Planner who has determined that the project complies with the required development standards. The proposal meets the 45' height, related setback, screening and landscaping, venting, parking and access standards.

### C. THE PROVISIONS OF CHAPTER 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of the SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

#### Summary

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC and RCW and with the regulations of Chapter 23.60 of the Seattle Shoreline Master Program.

The project as proposed meets the specific standards for development in the UI environment. It also conforms to the general development standards, as well as the requirements of the underlying zone, therefore should be approved.

Pursuant to the Director's authority under Seattle's Shoreline Master Program, to ensure that development proposals are consistent with the policies and procedures, and complies with specific development standards of the underlying zones, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal, as conditioned below, is hereby approved.

### DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

### SHORELINE SUBSTANTIAL DEVELOPMENT CONDITIONS

#### For the Life of the Project

1. The owner(s) and/or responsible party(s) shall require each person that repairs vessels read, sign and follow the Best Management Practices (BMP) plan that has been

developed for this project. The BMP plan shall follow all applicable BMPs required by the Washington Department of Ecology (DOE) for protection of water quality and vessel repair activities near and over water.

2. A spill prevention kit shall be located on site and at least three employees shall be properly trained in using the spill protection kit.

Signature: \_\_\_\_\_ (signature on file) Date: January 24, 2012

Tami Garrett, Senior Land Use Planner  
Department of Planning and Development

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